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February 14, 2005

EX PARTE SUBMISSION VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW B-204
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 03-133, In the Matter of AT&T Corp.
Petition for Declaratory Ruling Regarding "Enhanced"
Prepaid Calling Card Services

Dear Ms. Dortch:

AT&T Corp. ("AT&T") has no legitimate excuse for refusing to pay access charges or universal service assessments on its prepaid calling card services. Faced with a legally indefensible position, AT&T has attempted to politicize this proceeding. This is unacceptable and should not be countenanced.

Remarkably, AT&T argues that it would be unpatriotic for the Federal Communications Commission ("Commission") to require that AT&T comply with the law. To foster this claim, AT&T has launched a massive lobbying campaign claiming that a ruling against AT&T would compromise the war effort overseas, because it would compel AT&T to raise the calling card rates which it charges to United States troops deployed abroad by 20% or more.

An honest review of the facts shows that AT&T is using its monopoly over calls to the United States from Iraq and Afghanistan and its apparent threat to increase rates to United States troops fighting in those areas to shield its own inappropriate conduct. Specifically, Qwest directs the Commission's attention to the following:

- AT&T has a near-monopoly over the telephone services available to American troops that are deployed abroad. It has created this monopoly position through long-term contracts with the Army and Air Force Exchange Service ("AAFES"), under which AT&T has been designated as the sole provider of prepaid calling

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cards that are sold at military post exchanges.¹ Since the AAFES is the entity which runs the United States armed forces' post exchanges, this exclusive sales and marketing deal effectively means that military personnel have no choice except to buy AT&T's calling cards while on deployment in Iraq and other war zones.²

- AT&T has also an established monopoly over the telephone facilities at which the troops typically use these calling cards. Specifically, through another exclusive contract, AT&T serves as the sole provider of the "call centers" at which service members can place telephone calls. Not coincidentally, the AT&T payphones at these call centers accept only AT&T's calling cards.³ AT&T blocks attempts by servicemen and servicewomen to use the much less expensive (and often free) calling cards provided by its competitors.⁴

¹ Several years ago, AAFES granted AT&T's consumer division an exclusive seven-year contract to be the sole concession on Army and Air Force bases domestically and overseas to market residential long distance and (where available) local service, operate public pay phones and offer AT&T Calling Card and Pre-Paid Calling Cards. *See* <http://www.pstribes.com/edsa.html>. Through this contract for these services, AT&T touts itself as "an official provider of personal telecommunications services for all 5 branches of [the] U. S. military at 529 military bases worldwide and on more than 200 U. S. Navy ships afloat." *See* <http://www.att.com/news/2002/10/03-10878>. *Stars and Stripes* has noted that the contract guarantees AT&T, "the telecommunications giant[,] a virtual monopoly for communication services[,] including pre-paid cards, "at overseas and stateside bases[.]" *See* <http://www.pstribes.com/edsa.html>.

² *See* Letter from J. Sello (AT&T) to M. Dortch (FCC), January 14, 2005, at 8 (AT&T prepaid cards are often the "only way" for "military personnel" to "make telephone calls"). Obviously armed forces personnel will be able to use other means to make calls to home from locations off base in many locations. This luxury is not available in a war zone.

³ *See* Letter from J. Sello (AT&T) to M. Dortch (FCC), November 8, 2004, at 4 ("AT&T Call Centers . . . do not offer the capability to use other providers' cards.")

⁴ When other carriers have attempted to give away free calling cards to the troops, AT&T has blocked the use of these cards and prevented servicemen and servicewomen from using them. *See* AT&T Petition For Declaratory Ruling Regarding "Enhanced" Prepaid Card Services, WC Docket No. 03-133, Letter from R. Juhnke (Vice President, Federal Regulatory Affairs, Sprint), to M. Dortch (FCC), August 2, 2004, at 2 (AT&T's calling centers block the use of calling cards distributed by Sprint and other carriers); *see also* http://www.me.ngb.army.mil/Family/package_helpful_hints.htm (advising that National Guard members facing deployment to Iraq should only bring AT&T calling cards with them since "AT&T only works from there.")

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- The calling cards used by the troops are subsidized by the United States government. Specifically, the Department of Defense purchases calling cards from AT&T and makes them available without charge to servicemen and servicewomen at amounts up to \$40.00 per month.⁵ AT&T's prepaid calling card rate is also presumably governed by contract with the government, and we assume that this rate cannot be raised even if AT&T is required to comply with the law.
- The cost to AT&T of paying the proper interstate access charges on its calling card services (as are paid by all other carriers) would be *de minimis*, relative to the prices it currently charges for these services. Qwest's investigation has uncovered that AT&T charges approximately \$0.21 per minute to United States troops which use its calling cards to telephone home from Iraq. In contrast, terminating interstate access charges average approximately \$0.0055 cents per minute – which is less than 3% of the charge that AT&T is collecting from United States troops. As a result, if AT&T has not been paying these charges, and were permitted by its contract with the government to pass these access charges through to servicemen and servicewomen forced to use the AT&T card – the cost would still be a tiny portion of AT&T's rates.⁶
- The United States armed forces are only a small piece of AT&T's total market for its prepaid calling cards, and the services that AT&T provides to members of the United States military constitute a tiny portion of its prepaid calling card revenues. AT&T's prepaid calling cards are widely available at retail outlets in the United States,⁷ and are used by an extremely large and diverse base of customers. AT&T's Petition is directed at exempting calls using all of these cards from access charges and universal service support, not just those used by soldiers overseas.

⁵ See Letter of July 23, 2004 from Charles S. Abell, Principal Deputy, Office of the Under Secretary of Defense, to Michael Powell.

⁶ AT&T currently advertises that the “promotional rate” for its “Military Exchange 550 Card” offers service from Iraq and Afghanistan for \$0.21 per minute. See <https://thor.aafes.com/scs/default.aspx>. In turn, interstate switched access rates currently average \$0.0055 per minute.

⁷ As the Commission may be aware, the AT&T calling cards sold at Wal-Mart now bear a political message stating that, “The Federal Communications Commission is reviewing the fees applied to your prepaid card calls. Your current rates, however, still apply. To tell the White House you want prepaid card rates to stay low, please call 800-696-6322.” As we understand it, AT&T claims that forcing its customers to listen to this message exempts the AT&T service from payment of access and universal service support.

Ms. Marlene H. Dortch

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Finally, there is no merit to AT&T's suggestions that incumbent local exchange carriers will try to charge AT&T intrastate access rates for calls from Iraq and Afghanistan rather than interstate rates, which are considerably lower. No matter what else might be disputed in this proceeding, no one to Qwest's knowledge has claimed that a call from Iraq or Afghanistan is intrastate in nature, or that the appropriate access charges on those calls ought to be assessed at the intrastate rate. In fact, there is no reason to suspect that AT&T has ever been billed the intrastate access rate for calls from Iraq or Afghanistan. Qwest has not and will not bill intrastate access charges for calls placed to its local service customers from these or other international locations.

AT&T's actions are causing considerable financial harm to other carriers and to the poor and rural consumers assisted by the various universal service programs that AT&T has been short-changing. AT&T's actions also bear a direct cost both to competition and to the public interest. If AT&T has not been paying proper access charges on its calling card traffic, it will have withheld millions of dollars in fees from carriers such as Qwest. A very small part of those fees will be attributable to calls from soldiers in Iraq and Afghanistan—assuming that AT&T has not been paying interstate access charges on those calls. Furthermore, since AT&T has disclosed that it has not paid the required universal service fund contributions on its calling cards, it is clear that carriers which have complied with the law have unknowingly been paying higher assessments for at least the last five years.

Qwest certainly agrees that the nation must work towards enabling those Americans who serve in the military to be able to speak to their families, especially when they are deployed in combat situations. We certainly should examine the propriety of allowing AT&T to deny military personnel access to cheaper, and even free, services offered by other providers. However, AT&T's threats to exploit its monopoly and assess massive price increases to the men and women serving in the United States armed services if the Commission rules against it are based on premises that are false and misleading. The notion that it might be unpatriotic to obey the law – which in essence is AT&T's position – deserves no credence.

In accordance with Commission rule 47 C.F.R. Section 1.49(f), this *ex parte* letter is being filed electronically via the Commission's Electronic Comment Filing System pursuant to Commission rule 47 C.F.R. Section 1.1206(b)(1).

Sincerely,

/s/ Gary R. Lytle